SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 940

PHILIP J. KENNEY, Petitioner,

v.

AMERICAN CAN COMPANY, a corporation, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	2
Reasons for granting the writ	4
Conclusion	5

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, was affirmed in the above-entitled case on October 30, 1968.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court (R. 249). (See also Transcript of Proceedings, p. 103, lines 1, 2, 3; p. 110, lines 1 and 2.) The opinion of the Appellate Court; judgment affirmed on October 30, 1968 and ensuing Petition for rehearing denied December 2, 1968. A Stay of Mandate was ordered December 10, 1968 until, in the event a Writ of Certiorari is granted petitioner, then stay is to continue pending the final disposition of the case by this court.

JURISDICTION

The judgment of the District Court was entered August 16, 1967 (R. 249). The Court of Appeals

heard oral argument on July 10, 1968. The Petition for rehearing was denied on December 2, 1968 and stay of mandate was filed December 12, 1968. The jurisdiction of this court is invoked under Title 28, U.S.C. Section 1254 (65), Due process.

QUESTION PRESENTED

Whether there exists an unauthorized appropriation by the respondents of the petitioner's property (intellectual) whereby the petitioner has been denied just compensation.

STATUES INVOLVED

1. Carnley v. Cochran, Fla. 1962, 82 S.Ct. 884, 369 U.S. 506, 8 L.Ed.2d 70. (Claim of lack of assistance of trial counsel presented important constitutional question warrenting the granting of Certiorari.)
2. U.S.C.A. Constitutional Amendment 5, and 14, guaranteeing just compensation, and due process.

STATEMENT

A complaint was filed against the respondent which was based upon an alleged misappropriation of the petitioner's personal property which should have been held in trust. The jurisdiction of the District Court was invoked upon diversity of citizenship.

The property in dispute utilizes an innovation of sealing containers which provides a means for easy opening thereof.

The petitioner claims that this idea was disclosed by him to the respondent but was not released to respondent for its use.

The petitioner contends that the respondent is bound by an implicit agreement to compensate the petitioner for use of anything disclosed and used substantially by it, as is stated in paragraph G

of the formal agreement (See R. 103) existing between the parties and upon which the aforementioned implied agreement is contingent, at option of the petitioner.

The respondent denies the petitioner's allegations and bases its entire defense on one main point, that the petitioner disclosed only a multiple tear strip permanently adhered to the sides of the containers, as opposed to a single strip adhered in such a fashion as to permit easy peel-off.

Petitioner contends that even if this were true, which it most certainly is not, respondent would be estopped from making this claim because of its earlier evaluation. (See R 50. Also cited in petitioner's rejected rehearing petition to the Appellate Court.)

More particularly, petitioner in an August, 1955 disclosure relayed the idea of sealing cans to provide a more safe and convenient means for opening same. The proceedure under which the August 1955 disclosure was made fell into dispute whereupon, petitioner disclosed a second time, in November, 1955, this time omitting certain material and stated that this disclosure was submitted in place of the earlier one (See November, 1955 Disclosure, R. 19) which was tantamount to saying that the material previously disclosed and henceforth omitted is not for you. During the course of the aforementioned dispute, an attorney employee for the respondent gave a preliminary evaluation of the petitioner's August, 1955 disclosure in a letter to the petitioner dated October 26, 1955 (See R. 50) wherein he read the August 1955 disclosure as showing more than one type of sealing strip because he said, *the tearing or opening strip you suggested.* This evaluation was later validated by the respondent's act of omission in its letter of final determination, dated January 9, 1956, designating or deleting any other interpretation of what was meant by an opening strip as opposed to a multiple tear strip which the respondent in its defense claims was the

only method disclosed by the petitioner. Thus, in considering the above valid evaluation together with the qualifying statement in the January 9, 1956 letter (See R. 12), wherein it says, *It now appears your submission is substantially the same as your earlier one*, the petitioner is certainly within reason to believe he is entitled to compensation for anything disclosed by him and used by the respondent. The petitioner contends that the act of adhering directly to containers a strip, as was suggested, could be done in the August, 1955 disclosure. The fact is that the respondent is adhering directly to cans a strip, as was suggested by the petitioner (irregardless of whether it is singular or plural), constitutes an appropriation which respondent was not authorized to use by petitioner. The respondent does not deny that the petitioner disclosed the idea of adhering a strip to the can, but claims this use was only a multiple strip permanently adhered as opposed to the single strip which they contend was never in the head of the petitioner, but, which of course the respondent is estopped from claiming because of the cited early evaluation, and also estopped from contending it was a permanent type adhesive because no specific type was mentioned in the August 1955 disclosure, but rather borrowed the mentioned permanent type adhesive from the Nov., 1955 material introduced by the petitioner. This was done erroneously because, in view of the nature of the implied status of the agreement, the respondent would have no recourse to anything disclosed in the formal agreement for such purposes.

REASONS FOR GRANTING THE WRIT

The petitioner's trial was held spontaneously (See comments in Transcript of the proceeding, p. 57, line 25; p. 58, line 1; p. 3, lines 1,2,3,4; p. 25, lines 21, 22, 23; p. 2, lines 12 and 13) in the District Court and petitioner acted without benefit of counsel.

There appears to be some doubt in the court's reason for judgment (See Transcript of Proceedings, p. 110, lines 1 and 2) wherein it says, *I don't think you have got anything. But I may be mistaken.*

This observation is strengthened by the court's willingness to assist the petitioner in appealing his case (See Transcript of Proceedings, p. 103, lines 1, 2, 3 and p. 112, lines 2, 3, 4) and for its concern in getting a good lawyer (See Transcript of Proceedings, p. 112, lines 13, 14, 15 and 16).

The petitioner believes that ample reason has been cited to show the necessity for settlement by this court, that the matter is still in dispute appears to be also acknowledged by the Court of Appeals for the Ninth Circuit by its willingness to give a Stay of Mandate until this court has had a chance to act.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari for the whole record should be granted.

Respectfully submitted,

Philip J. Kenney, pro per
Petitioner

December 21, 1968